

[1/9/78-Not Submitted-DF]

Folder Citation: Collection: Office of Staff Secretary; Series: Presidential Files; Folder: [1/9/78-Not Submitted-DF]; Container 58

To See Complete Finding Aid:

http://www.jimmycarterlibrary.gov/library/findingaids/Staff_Secretary.pdf

THE WHITE HOUSE
WASHINGTON

per SE and JM, HOLD
the user charges memo
until further notice

from SE's office
1/9/78

THE WHITE HOUSE

WASHINGTON

~~SECRET~~

MEMORANDUM

Date: December 28, 1977

FOR ACTION:

Stu Eizenstat *Types attached*
Bob Lipshutz *ac by phone*
Frank Moore (Les Francis)
Jack Watson *NC*

FOR INFORMATION:

The Vice President
Midge Costanza
Zbig Brzezinski
Charles Schultze *Concur by phone*
- Rick Hutcheson

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: McIntyre memo dated 12/27/77 re User Charges Policy

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: 12:00 Noon

DAY: Friday

DATE: December 30, 1977

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE
WASHINGTON

<input checked="" type="checkbox"/>	FOR STAFFING
<input type="checkbox"/>	FOR INFORMATION
<input type="checkbox"/>	FROM PRESIDENT'S OUTBOX
<input type="checkbox"/>	LOG IN/TO PRESIDENT TODAY
<input type="checkbox"/>	IMMEDIATE TURNAROUND

ACTION	FYI	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	MONDALE
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	COSTANZA
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	EIZENSTAT
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	JORDAN
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	LIPSHUTZ
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	MOORE
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	POWELL
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	WATSON
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	McINTYRE
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	SCHULTZE

<input type="checkbox"/>	ENROLLED BILL
<input type="checkbox"/>	AGENCY REPORT
<input type="checkbox"/>	CAB DECISION
<input type="checkbox"/>	EXECUTIVE ORDER
	Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day

<input type="checkbox"/>	ARAGON
<input type="checkbox"/>	BOURNE
<input checked="" type="checkbox"/>	BRZEZINSKI
<input type="checkbox"/>	BUTLER
<input type="checkbox"/>	CARP
<input type="checkbox"/>	H. CARTER
<input type="checkbox"/>	CLOUGH
<input type="checkbox"/>	FALLOWS
<input type="checkbox"/>	FIRST LADY
<input type="checkbox"/>	HARDEN
<input type="checkbox"/>	HUTCHESON
<input type="checkbox"/>	JAGODA
<input type="checkbox"/>	GAMMILL

<input type="checkbox"/>	KRAFT
<input type="checkbox"/>	LINDER
<input type="checkbox"/>	MITCHELL
<input type="checkbox"/>	MOE
<input type="checkbox"/>	PETERSON
<input type="checkbox"/>	PETTIGREW
<input type="checkbox"/>	POSTON
<input type="checkbox"/>	PRESS
<input type="checkbox"/>	SCHLESINGER
<input type="checkbox"/>	SCHNEIDERS
<input type="checkbox"/>	STRAUSS
<input type="checkbox"/>	VOORDE
<input type="checkbox"/>	WARREN



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 27 1977

ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM: James T. McIntyre, Jr.

SUBJECT: User Charges Policy

Background

Recent court decisions make it desirable that the user charges policy of the Federal Government be reviewed and restated.

In the past, our user charges policy has been to charge special beneficiaries the total cost to the government of the goods or services they receive. The policy was changed by recent court decisions. Specifically, in 1974 the Supreme Court stated (in an obiter dictum) that in setting such charges under present law, the value of benefits of the good or service to the general public must be subtracted from the total cost to the government of providing the benefit. Only the difference may be charged to the special beneficiary.

Discussion

The 1974 decision and later decisions interpreting it have clouded the government's user charges policy. Because "value to the general public" cannot be defined or measured easily, the decisions complicated immensely the process of determining user fees, and at least one agency (Federal Communications Commission -- the defendant in the court cases) has taken the position that it is unable to administer a user charges policy effectively under such an elusive concept. The decisions have also modified the original mandate of the Congress that the provision of special services or benefits "shall be self-sustaining to the full extent possible." We believe that in most instances special beneficiaries should be charged the full cost of goods and services they receive.

We cannot estimate accurately the probable total loss in user charge receipts that could result from the court decisions. The total annual amount of present user charge receipts subject to challenge under these decisions is in the neighborhood of \$500 million, but it is unlikely that more than \$200 million of that would be lost. The principal threat is to proposed new user charges in areas where benefits to the general public might plausibly be argued.

There are three options for dealing with the dilemma created by the court decisions:

1. Accept the decisions and develop instructions on how to compute user charges consistent with them.
2. Request special legislation for each user charge that would permit the recovery of total cost from special beneficiaries.
3. Request general legislation that would permit the recovery of total cost from special beneficiaries. (Proposed legislation was developed jointly by Justice and OMB for introduction in the 94th Congress. Congressman Mahon was asked informally to introduce it but declined on jurisdictional grounds. Time ran out before the Ford administration followed through with others.)

In August, OMB sent a draft bill to various agencies for comment. Many of the comments received were unfavorable, largely it appears, because the agencies are opposed to user charges, per se, when applied to their programs. Many of the comments are as applicable to existing user charges as to the proposed new policy. We have revised our initial proposal to incorporate those comments that strengthen our intentions. Comments not incorporated are summarized in Attachment A with appropriate OMB rebuttal arguments. Examples of activities where user charges are assessed and activities where user charges might be initiated are included as Attachment B.

Recommendation

I recommend Option 3 and, if that does not succeed during the 95th Congress, Option 2 thereafter. If you concur with our recommendation, we will prepare the necessary paperwork and prepare to transmit the bill with your fiscal year 1979 budget or shortly thereafter.

Decision

Agree _____

Disagree _____, follow Option ____

Let's discuss _____

Attachment

ATTACHMENT A

The OMB draft bill makes no change in the coverage of the original 1952 statute; its purpose is to permit recovering from the principal beneficiaries the total cost of the services provided.

Several agencies appear to be of the opinion -- incorrectly, in our view -- that existing programs would have to be eliminated or reduced if the draft bill were enacted. These agencies are under the mistaken impression that the bill would require user charges to be imposed where they are not required now. In point of fact, user charges should have been established years ago for the programs the agencies are addressing; charges should have been established pursuant to the 1952 statute and OMB Circular A-25, which has been in effect since 1959. There has been no change in the coverage of Government user charge policy since the policy circular was issued.

Some agencies stated that they prefer to conduct their own internal review of activities covered by the proposed legislation -- before OMB-mandated charges are established. The existing OMB Circular A-25 has directed agencies to do just that since 1959. In this context, the comment is a bit puzzling.

One purpose of the user charges policy is to require that agencies identify those programs that are of benefit to a limited population and determine through the market place -- user charges -- whether the beneficiaries are willing to pay the cost of the services they receive free or at very low fees. Most agencies appear to consider user charges a threat to the existence of such programs -- and they are right. Our way of saying it, however, is that user charges are one tool of program evaluation, helping to determine the value of a program to its beneficiaries and to distribute the costs of these special services to those recipients, not the taxpayer.

The more critical of the agency comments follow.

Department of Commerce.--The Department expressed concern that user charges legislation would be an unconstitutional delegation of the congressional power of taxation. This view was expressed by Justice Douglas and opposed by Justice Marshall in the 1974 Supreme Court decision. The Justice Department agrees with Justice Marshall.

Commerce notes that it anticipates a dramatic fall in the use of services if user fees are charged. The proposed revised user charges policy statement would not extend the policy beyond what is now covered by law. Agencies are supposed to be charging fees now for services that would continue to be covered by the new law. Commerce also notes that many recipients of some services might not have the money to pay higher fees. The concept of user fees is intended to help agencies determine which of their programs that provide special benefits cannot meet a market test. If the agencies want to continue such programs on the grounds that they serve a public need, the programs should be justified specifically as a free service in the agencies' budget requests.

Commerce recommends that any change in the user fee system be initiated through an agency self-evaluation process rather than by direction from OMB. Apparently, Commerce is unaware that such a self-evaluation process was provided by the original law and the 1959 Circular A-25 policies. Moreover, Commerce should have been conducting intensive self-evaluation as part of ZBB.

Department of Defense.--The agency believes that the bill is unnecessary -- that the current statute has been effectively administered. The number of negative General Accounting Office reports to various agencies -- including Defense -- on this subject indicates, on the contrary, that agencies are not doing an effective review of the user charge statute and their programs. The Department's position that no major difficulties have been encountered in the administration of the current statute misses the point that the Court has created problems by changing the user charges policy in a significant way -- by its ruling that value to the general public must be taken into account in setting fees.

Department of Health, Education, and Welfare.--The Department is concerned about possible increased fees for research publications. The current law is not being changed in this regard; HEW should have been charging for these services all along. If HEW believes that these publications are necessary and would not stand the market place test of user charges, then the Department should specifically request funds for them.

The Department would like the draft bill to specify that requests for information on employee work histories needed in fulfilling ERISA program requirements, currently covered under the Freedom of Information Act (FOIA), are subject to user charges. Employers are using social security research facilities to obtain employee earnings histories. Clearly, this is a user charge service, but due to a technicality of the FOIA, employers are applying for these services under the FOIA. OMB does not disagree with HEW, but the proper solution would seem to be proposing an amendment to the FOIA -- rather than to have a section of that act repealed through user charges legislation.

Department of State.--The State Department objects to the fact that the proposed draft would require charges for certain services that are now provided free. To repeat an earlier comment, the proposed draft does not change what has been statutorily authorized since 1952 and stated in official government policy since 1959. Under existing law, State should have been charging for those services that would also be covered by the proposed legislation, since the coverage would not be changed by our draft bill.

Department of the Treasury.--The Department believes that some maximum charge limit should be specified in law. OMB disagrees. Any statutory ceiling might impose undesirable restrictions upon future changes in user charge policy. A revised OMB Circular A-25, which would specify guidelines to be used, could be changed as conditions warrant.

Environmental Protection Agency.--The Agency is concerned about charging fees for some of its regulatory activities, which are not likely to be considered special benefits by those who are regulated. The proposed legislation would not change the coverage of the current law, under which charges are authorized for specific regulatory activities (e.g., filing of applications for permits), and other special services or benefits. Charges for such activities are made in other regulated areas. Also, the agency would like to continue to make its publications available free of charge, -- on the grounds that dissemination of the information is part of "openness and candor" and, in the technology exchange area, that the program would be severely curtailed if charges were to be imposed for these services. As stated before, the agencies should specifically request funds for

these services if they feel they would not meet market tests.

Council on Wage and Price Stability.--The Council expresses support for the Supreme Court's rulings in 1974 and states that these rulings will lead to more efficient government. How a more efficient government will result from the Court's decision is not explained. The decision will not lead to greater efficiency. In fact, it has impaired the effectiveness of the pricing mechanism as a device for improving efficiency and has resulted in litigative challenges to regulatory agencies.

Small Business Administration.--SBA would like to have the section dealing with exclusions specified in law amended to read "specified or intended by law." The provision to reflect the "intended" meaning would open the door for all agencies to waive or eliminate fees. "Intent" would be extraordinarily difficult to prove, especially where the matter of user charges was not considered when the program legislation was being considered.

Activities where user fees are assessed

Inspection, licensing, certification, processing, and registration services provided by various Government agencies;

Nuclear operation, licensing, and inspection permits;

Market news services conducted by various agencies;

Import fees for petroleum products;

Entrance fees for National Parks;

Grazing and other land uses;

Passports and related services;

Copyrights and related services;

Meat grading services.

Activities where user fees might be initiated 1/

Environmental Protection Agency regulatory activities;

Waterway user fees;

General aviation user fees;

NASA space shuttle user fees;

Establishment of fees for market news services;

Reestablishment of FCC fees;

Increased fees from existing activities.

1/ Some proposals -- waterway user fees and NASA space shuttle fees -- are already in the legislative and development stage.

THE WHITE HOUSE

WASHINGTON

January 3, 1977

MEMORANDUM FOR: THE PRESIDENT
FROM: STU EIZENSTAT *Stu*
SUBJECT: McIntyre Memo Re: User Charges Policy

BACKGROUND

For many years it has been the policy of the federal government, mandated by the Congress, that the provision of special services or benefits by agencies "shall be self-sustaining to the full extent possible." McIntyre points out that Supreme Court decisions have complicated the federal user charges policy by declaring that the value of benefits of the goods or services to the general public must be subtracted from the total cost to the government of providing the benefit. Only the difference may be charged to the special beneficiary.

McIntyre recommends that you support general legislation, to be introduced along with your FY'79 budget, that would permit the recovery of total cost from special beneficiaries.

DISCUSSION

While the introduction of general legislation on this matter may be desirable, it is not necessary to propose such a bill in this session of Congress. As you know, we are involved in a tough and close battle to win Congressional approval of a bill to impose inland waterway user charges. The Administration backed bill would recover 100% of operation and maintenance costs and 50% of new construction costs. I am concerned that the introduction of general user charges legislation may impede our ability to pass the waterway bill.

McIntyre notes that many Executive Branch agencies oppose general user charges legislation, preferring to set their own policy. It is clear that the agencies have not set policy

efficiently in this area and that Presidential attention is required. To correct this situation while avoiding complicating the water user fee issue, I would recommend that you instruct OMB to inform the agencies that an evaluation of user charges must be included as a part of ZBB for fiscal year 1980. The need for general legislation may be assessed better at the conclusion of such a process.

If you wish to act this year, I suggest a meeting be held with you before any decision is made in light of the number and diversity of agency concerns.

THE WHITE HOUSE
WASHINGTON

1 R W A R B

1/21
Terry will call back;
She thinks rewrite is
w/ M. I. McConkey
will call to say if
discussed in budget
session

THE WHITE HOUSE
WASHINGTON

Date: August 3, 1977

MEMORANDUM

FOR ACTION:

→ Stu Eizenstat *concur*
Bob Lipshutz *concur*
Frank Moore
Jack Watson *attached*

FOR INFORMATION:

The Vice President

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Lance's memo dated 8/2/77 re User Charges Policy.

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: 12:00 NOON

DAY: FRIDAY

DATE: August 5, 1977

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.

☐ No comment.

Please note other comments below:

*To be held for budget review
session, 2nd wk in Dec*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

THE WHITE HOUSE
WASHINGTON

/	FOR STAFFING
	FOR INFORMATION
	FROM PRESIDENT'S OUTBOX
	LOG IN/TO PRESIDENT TODAY
	IMMEDIATE TURNAROUND

ACTION	FYI	
	/	MONDALE
		COSTANZA
/		EIZENSTAT
		JORDAN
/		LIPSHUTZ
/		MOORE
		POWELL
/		WATSON
		LANCE
		SCHULTZE

	ENROLLED BILL
	AGENCY REPORT
	CAB DECISION
	EXECUTIVE ORDER
Comments due to Carp/Huron within 48 hours; due to Staff Secretary next day	

	ARAGON
	BOURNE
	BRZEZINSKI
	BUTLER
	CARP
	H. CARTER
	CLOUGH
	FALLOWS
	FIRST LADY
	HARDEN
	HUTCHESON
	JAGODA
	KING

	KRAFT
	LINDER
	MITCHELL
	MOE
	PETERSON
	PETTIGREW
	POSTON
	PRESS
	SCHLESINGER
	SCHNEIDERS
	STRAUSS
	VOORDE
	WARREN

Date: August 3, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat
Bob Lipshutz
Frank Moore
Jack Watson

FOR INFORMATION:

The Vice President

445

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Lance's memo dated 8/2/77 re User Charges P 1.

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: 12:00 NOON

DAY: FRIDAY

DATE: August 5, 1977

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☒ I concur. *Stu* Stuart Eizenstat ☐ No comment.

Please note other comments below:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone 7052)



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 2 1977

ACTION

MEMORANDUM FOR: THE PRESIDENT
FROM: Bert Lance *BL*
SUBJECT: User Charges Policy

BACKGROUND:

Recent court decisions make it desirable that the user charges policy of the Federal Government be reviewed and restated.

In the past, our user charges policy has been to charge special beneficiaries the total cost to the government of the goods or services they receive. The policy was changed by recent court decisions. Specifically, in 1974, the Supreme Court ruled (in an obiter dictum) that in setting such charges under present law, the value of benefits of the good or service to the general public must be subtracted from the total cost to the government of providing the benefit. Only the difference may be charged to the special beneficiary.

DISCUSSION:

The 1974 decision and later decisions interpreting it have clouded the government's user charges policy. Because "value to the general public" cannot be defined or measured easily, the decisions complicated immensely the process of determining user fees, and at least one agency (Federal Communications Commission -- the defendant in the court cases) has taken the position that it is unable to administer a user charges policy effectively under such an elusive concept. The decisions have also modified the original mandate of the Congress that the provision of special services or benefits "shall be self-sustaining to the full extent possible." We believe that in most instances special beneficiaries should be charged the full cost of goods and services they receive.

We cannot estimate accurately the probable total loss in user charge receipts that could result from the court decisions. The total annual amount of present user charge receipts subject to challenge under these decisions is in the neighborhood of \$500 million, but it is unlikely that more than \$200 million of that would be lost. The principal threat is to proposed new user charges in areas where benefits to the general public might plausibly be argued.

There are three options for dealing with the dilemma created by the court decisions:

1. Accept the decisions and develop instructions on how to compute user charges consistent with them.
2. Request special legislation for each user charge that would permit the recovery of total cost from special beneficiaries.
3. Request general legislation that would permit the recovery of total cost from special beneficiaries. (Proposed legislation was developed jointly by Justice and OMB for introduction in the 94th Congress. Congressman Mahon, (House Appropriations), who was asked informally to introduce it, declined on jurisdictional grounds, and time ran out before the Ford Administration followed through with others.)

RECOMMENDATION

I recommend Option 3 and, if that does not succeed during the 95th Congress, Option 2 thereafter.

DECISION:

Agree _____

Disagree _____, follow Option _____

Let's discuss _____



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 2 1977

ACTION

MEMORANDUM FOR: THE PRESIDENT
FROM: Bert Lance *Ala-*
SUBJECT: User Charges Policy

BACKGROUND:

Recent court decisions make it desirable that the user charges policy of the Federal Government be reviewed and restated.

In the past, our user charges policy has been to charge special beneficiaries the total cost to the government of the goods or services they receive. The policy was changed by recent court decisions. Specifically, in 1974, the Supreme Court ruled (in an obiter dictum) that in setting such charges under present law, the value of benefits of the good or service to the general public must be subtracted from the total cost to the government of providing the benefit. Only the difference may be charged to the special beneficiary.

DISCUSSION:

The 1974 decision and later decisions interpreting it have clouded the government's user charges policy. Because "value to the general public" cannot be defined or measured easily, the decisions complicated immensely the process of determining user fees, and at least one agency (Federal Communications Commission -- the defendant in the court cases) has taken the position that it is unable to administer a user charges policy effectively under such an elusive concept. The decisions have also modified the original mandate of the Congress that the provision of special services or benefits "shall be self-sustaining to the full extent possible." We believe that in most instances special beneficiaries should be charged the full cost of goods and services they receive.

We cannot estimate accurately the probable total loss in user charge receipts that could result from the court decisions. The total annual amount of present user charge receipts subject to challenge under these decisions is in the neighborhood of \$500 million, but it is unlikely that more than \$200 million of that would be lost. The principal threat is to proposed new user charges in areas where benefits to the general public might plausibly be argued.

There are three options for dealing with the dilemma created by the court decisions:

1. Accept the decisions and develop instructions on how to compute user charges consistent with them.
2. Request special legislation for each user charge that would permit the recovery of total cost from special beneficiaries.
3. Request general legislation that would permit the recovery of total cost from special beneficiaries. (Proposed legislation was developed jointly by Justice and OMB for introduction in the 94th Congress. Congressman Mahon, (House Appropriations), who was asked informally to introduce it, declined on jurisdictional grounds, and time ran out before the Ford Administration followed through with others.)

RECOMMENDATION

I recommend Option 3 and, if that does not succeed during the 95th Congress, Option 2 thereafter.

DECISION:

Agree _____

Disagree _____, follow Option _____

Let's discuss _____

Date: August 3, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat
Bob Lipshutz
~~Frank Moore~~
Jack Watson

FOR INFORMATION:

The Vice President

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Lance's memo dated 8/2/77 re User Charges Policy.

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: 12:00 NOON

DAY: FRIDAY

DATE: August 5, 1977

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☒ I concur.☐ No comment.

Please note other comments below:

BJ

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

Date: August 3, 1977

MEMORANDUM

FOR ACTION:

Stu Eizenstat
Bob Lipshutz
Frank Moore
Jack Watson

FOR INFORMATION:

The Vice President

FROM: Rick Hutcheson, Staff Secretary**SUBJECT:** Lance's memo dated 8/2/77 re User Charges Policy.

**YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:**

TIME: 12:00 NOON**DAY:** FRIDAY**DATE:** August 5, 1977**ACTION REQUESTED:**☒ Your comments

Other:

STAFF RESPONSE:☐ I concur.☐ No comment.*Please note other comments below:***PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 2 1977

ACTION

MEMORANDUM FOR: THE PRESIDENT
FROM: Bert Lance *BL*
SUBJECT: User Charges Policy

BACKGROUND:

Recent court decisions make it desirable that the user charges policy of the Federal Government be reviewed and restated.

In the past, our user charges policy has been to charge special beneficiaries the total cost to the government of the goods or services they receive. The policy was changed by recent court decisions. Specifically, in 1974, the Supreme Court ruled (in an obiter dictum) that in setting such charges under present law, the value of benefits of the good or service to the general public must be subtracted from the total cost to the government of providing the benefit. Only the difference may be charged to the special beneficiary.

DISCUSSION:

The 1974 decision and later decisions interpreting it have clouded the government's user charges policy. Because "value to the general public" cannot be defined or measured easily, the decisions complicated immensely the process of determining user fees, and at least one agency (Federal Communications Commission -- the defendant in the court cases) has taken the position that it is unable to administer a user charges policy effectively under such an elusive concept. The decisions have also modified the original mandate of the Congress that the provision of special services or benefits "shall be self-sustaining to the full extent possible." We believe that in most instances special beneficiaries should be charged the full cost of goods and services they receive.

We cannot estimate accurately the probable total loss in user charge receipts that could result from the court decisions. The total annual amount of present user charge receipts subject to challenge under these decisions is in the neighborhood of \$500 million, but it is unlikely that more than \$200 million of that would be lost. The principal threat is to proposed new user charges in areas where benefits to the general public might plausibly be argued.

There are three options for dealing with the dilemma created by the court decisions:

1. Accept the decisions and develop instructions on how to compute user charges consistent with them.
2. Request special legislation for each user charge that would permit the recovery of total cost from special beneficiaries.
3. Request general legislation that would permit the recovery of total cost from special beneficiaries. (Proposed legislation was developed jointly by Justice and OMB for introduction in the 94th Congress. Congressman Mahon, (House Appropriations), who was asked informally to introduce it, declined on jurisdictional grounds, and time ran out before the Ford Administration followed through with others.)

RECOMMENDATION

I recommend Option 3 and, if that does not succeed during the 95th Congress, Option 2 thereafter.

DECISION:

Agree _____

Disagree _____, follow Option _____

Let's discuss _____

MEMORANDUM
OF CALL

TO: Rick

☒ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Mr McComber
OF (Organization)

4630

☐ PLEASE CALL → PHONE NO.
CODE/EXT. _____

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☒ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE _____

RECEIVED BY T

DATE 8/10

TIME 11:10

STANDARD FORM 63
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-11.6

GPO : 1969-048-16-80341-1 323-380

63-108

YOU WERE CALLED BY: ☐ YOU WERE VISITED BY: ☐

Per JW comment,
OMTS will consider
getting agency views

Rich

8-10
9/27 - Terri checking on status

10/28 - ~~Let~~ Exp 12/1/77 from
OMTS (Dale McDougal)

Electrostatic Copy Made
for Preservation Purposes

MEMORANDUM
OF CALL

TO:

Rick

☒ YOU WERE CALLED BY—

☐ YOU WERE VISITED BY—

Mr McComber

OF (Organization)

4630

☐ PLEASE CALL —→

PHONE NO.
CODE/EXT.

☐ WILL CALL AGAIN

☐ IS WAITING TO SEE YOU

☒ RETURNED YOUR CALL

☐ WISHES AN APPOINTMENT

MESSAGE

RECEIVED BY

T

DATE

8/10

TIME

11:10

STANDARD FORM 63
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-11.6

GPO : 1969-048-16-80841-1 823-889

63-108

Date: August 3, 1977

MEMORANDUM

FOR ACTION:

~~Stu Eizenstat~~ *concur*
Bob Lipshutz
Frank Moore
Jack Watson

FOR INFORMATION:

The Vice President

FROM: Rick Hutcheson, Staff Secretary

SUBJECT: Lance's memo dated 8/2/77 re User Charges Policy.

YOUR RESPONSE MUST BE DELIVERED
TO THE STAFF SECRETARY BY:

TIME: 12:00 NOON

DAY: FRIDAY

DATE: August 5, 1977

ACTION REQUESTED:

☒ Your comments

Other:

STAFF RESPONSE:

☐ I concur.☐ No comment.

Please note other comments below:

TO: President
From: SW
You should require more details
about example of user charges
before you approve course of action.
Those agencies affected by such charges
should be able to comment before you
allow legislative preparation.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required
material, please telephone the Staff Secretary immediately. (Telephone, 7052)



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 2 1977

ACTION

MEMORANDUM FOR: THE PRESIDENT
FROM: Bert Lance *BL*
SUBJECT: User Charges Policy

BACKGROUND:

Recent court decisions make it desirable that the user charges policy of the Federal Government be reviewed and restated.

In the past, our user charges policy has been to charge special beneficiaries the total cost to the government of the goods or services they receive. The policy was changed by recent court decisions. Specifically, in 1974, the Supreme Court ruled (in an obiter dictum) that in setting such charges under present law, the value of benefits of the good or service to the general public must be subtracted from the total cost to the government of providing the benefit. Only the difference may be charged to the special beneficiary.

DISCUSSION:

The 1974 decision and later decisions interpreting it have clouded the government's user charges policy. Because "value to the general public" cannot be defined or measured easily, the decisions complicated immensely the process of determining user fees, and at least one agency (Federal Communications Commission -- the defendant in the court cases) has taken the position that it is unable to administer a user charges policy effectively under such an elusive concept. The decisions have also modified the original mandate of the Congress that the provision of special services or benefits "shall be self-sustaining to the full extent possible." We believe that in most instances special beneficiaries should be charged the full cost of goods and services they receive.

We cannot estimate accurately the probable total loss in user charge receipts that could result from the court decisions. The total annual amount of present user charge receipts subject to challenge under these decisions is in the neighborhood of \$500 million, but it is unlikely that more than \$200 million of that would be lost. The principal threat is to proposed new user charges in areas where benefits to the general public might plausibly be argued.

There are three options for dealing with the dilemma created by the court decisions:

1. Accept the decisions and develop instructions on how to compute user charges consistent with them.
2. Request special legislation for each user charge that would permit the recovery of total cost from special beneficiaries.
3. Request general legislation that would permit the recovery of total cost from special beneficiaries. (Proposed legislation was developed jointly by Justice and OMB for introduction in the 94th Congress. Congressman Mahon, (House Appropriations), who was asked informally to introduce it, declined on jurisdictional grounds, and time ran out before the Ford Administration followed through with others.)

RECOMMENDATION

I recommend Option 3 and, if that does not succeed during the 95th Congress, Option 2 thereafter.

DECISION:

Agree _____

Disagree _____, follow Option _____

Let's discuss _____